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Amazing Pet Expositions LLC d/b/a Amazing Pet Expos and Pet Event Pros and Nat Welage and Katlyn Shuckhart and Michelle Fite. Cases 14–CA–232234, 14–CA–232256, and 14–CA–234201.

October 18, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon charges filed by Nat Welage on December 6, 2018, Katlyn Shuckhart on December 6, 2018, and Michelle Fite on January 16, 2019,¹ the Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on April 5, against Amazing Pet Expositions LLC d/b/a Amazing Pet Expos and Pet Event Pros (the Respondent), alleging that it has violated Section 8(a)(1) of the Act. The Respondent filed an answer on April 18. However, on July 9, the Respondent filed a motion to withdraw its answer, and on July 10, the Regional Director granted that motion.

On July 10, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment Based on Respondent's Withdrawal of Answer. On July 17, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before April 19, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent timely filed an answer on April 18, it later withdrew that answer. Withdrawal of an answer has the same effect as the failure to file an answer, i.e., the allegations in the complaint must be considered true.²

¹ All dates are in 2019 unless otherwise indicated.

² See *Maislin Transport*, 274 NLRB 529, 529 (1985). Indeed, when withdrawing its answer, the Respondent expressly stated that it "prays

Accordingly, based on the withdrawal of the Respondent's answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability company with an office and place of business located in St. Louis, Missouri, has been engaged in the business of event production. During the 12-month period ending February 28, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in States other than the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

William Rilenge—Chief Operating Officer

Shelia Rilenge—Chief Executive Officer

At all material times, the following individual held the position set forth opposite his name and has been an agent of the Respondent within the meaning of Section 2(13) of the Act:

Ethan Barnett—Vice-President of Show Logistics

Since about June 6, 2018, the Respondent has maintained the following provisions in its Employee Confidentiality and Non-Compete Agreement:

...

2. It is understood and agreed that the Company may provide certain information that is, and must be kept, confidential at all times . . . "Confidential Information" can be defined as . . . payroll or compensation details . . . regardless of whether such information is designated as Confidential Information at the time of its disclosure.

3. This The Recipient shall keep secret and shall not use or disclose, reveal, transfer, reproduce, sell,

that the National Labor Relations Board order any and all such further relief as is appropriate, equitable, and available."

capitalize upon or take advantage of such Confidential Information relating to Discloser [the Company], its subsidiaries, affiliates, past, current or future customers, exhibitors, sponsors, clients, associates, suppliers, vendors or any other third party that does business with or has a business relationship with Discloser [the Company] without the express written and notarized consent of Discloser [the Company].

4. Recipient . . . The Recipient also agrees to not share or in any way disseminate—either verbally or in writing—the personal financial or other internal and generally-accepted to be sensitive details of his/her employment with Recipient, all of which will also be termed Confidential Information.

...

6. The Recipient agrees to not disclose the Confidential Information obtained from the Discloser [the Company] to anyone unless required by law or court order or generally available to the public other than by unauthorized disclosure. Further, Recipient agrees not to discuss, disseminate or otherwise share any information of a financial nature with anyone other than Discloser's [the Company's] ownership or financial management regardless of it being deemed Confidential Information.

About October 26, October 30, and November 9, 2018, the Respondent's employees Welage, Shuckhart, and Fite engaged in concerted activities with each other for the purposes of mutual aid and protection, by discussing the Respondent's pay practices. About November 11, 2018, Welage and Shuckhart engaged in concerted activities with each other for the purposes of mutual aid and protection, by demanding unpaid wages and telling the Respondent that they would not return to work until they received unpaid wages. About November 12–15, 2018, Welage and Shuckhart engaged in concerted activities with each other for the purposes of mutual aid and protection, by going on strike. About November 15, 2018, Welage engaged in concerted activities for the purposes of mutual aid and protection, by notifying Barnett that Welage and Shuckhart intended to report the Respondent to the Department of Labor. About November 26, 2018, Fite concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by complaining to the Respondent about unpaid wages.

About November 12–15, 2018, W. Rilenge told employees that because it was unlawful to terminate employees for going on strike, the Respondent would have to find another reason to terminate striking employees. About November 16 and 19, 2018, he told employees not to talk

around returning strikers because they might be recording conversations. About November 26, 2018, he told employees not to talk about pay around other employees. About November 20, 2018, the Respondent discharged Welage and Shuckhart because they engaged in the above protected concerted activities, and to discourage employees from engaging in these or other protected concerted activities. About November 26, 2018, the Respondent discharged Fite because she engaged in the above protected concerted activities, to discourage employees from engaging in the those or other protected concerted activities, and because the Respondent interpreted the Employee Confidentiality and Non-Compete Agreement to prohibit Fite from engaging in protected concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, and in accordance with the General Counsel's request for an "appropriate remedy" for the violations found, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing overly broad provisions of its Employee Confidentiality and Non-Compete Agreement prohibiting employees from discussing pay; telling employees that, because it was unlawful to terminate employees for going on strike, the Respondent would have to find another reason to terminate striking employees; telling employees not to talk around returning striking employees because they might be recording conversations; telling employees not to talk about pay around other employees; and discharging Nat Welage, Katlyn Shuckhart, and Michelle Fite, we shall order the Respondent to cease and desist from such conduct and to post a remedial notice. We shall further order the Respondent to rescind the unlawful provisions of its Employee Confidentiality and Non-Compete Agreement and advise its employees in writing that it has done so.

To remedy the Respondent's unlawful discharge of Welage, Shuckhart, and Fite, we shall order the Respondent to offer Welage, Shuckhart, and Fite reinstatement and to make them whole for any loss of earnings and other benefits suffered as a result of the unlawful action against them. Backpay shall be computed in accordance with *F. W.*

Woolworth Co., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part, 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Welage, Shuckhart, and Fite for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. We shall further order the Respondent to compensate Welage, Shuckhart, and Fite for any adverse tax consequences of receiving a lump-sum backpay award and to file with the Regional Director for Region 14 a report allocating the backpay awards to the appropriate calendar years. *Advo.Serv of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful discharges and to notify Welage, Shuckhart, and Fite in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Amazing Pet Expositions LLC d/b/a Amazing Pet Expos and Pet Event Pros, Saint Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing provisions of its Employee Confidentiality and Non-Compete Agreement prohibiting employees from discussing pay, pay practices, or other terms and conditions of employment.

(b) Telling employees that because it is unlawful to terminate employees for going on strike, the Respondent would have to find another reason to terminate striking employees.

(c) Telling employees not to talk around returning strikers because they might be recording conversations.

(d) Telling employees not to talk about pay around other employees.

(e) Discharging or otherwise discriminating against employees because they discuss pay, pay practices, or other terms and conditions of employment, or engage in other protected concerted activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the provisions of the Employee Confidentiality and Non-Compete Agreement prohibiting employees from discussing pay, pay practices, or other terms and conditions of employment.

(b) Furnish employees with an insert for the current Employee Confidentiality and Non-Compete Agreement that (1) advises that the unlawful provisions have been rescinded, or (2) provides lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees a revised Employee Confidentiality and Non-Compete Agreement that (1) does not contain the unlawful provisions, or (2) provides lawfully worded provisions.

(c) Within 14 days from the date of this Order, offer Nat Welage, Katlyn Shuckhart, and Michelle Fite reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Nat Welage and Katlyn Shuckhart whole for any loss of earnings and other benefits suffered as a result of their unlawful discharge on November 20, 2018, in the manner set forth in the remedy section of this Decision and Order.

(e) Make Michelle Fite whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge on November 26, 2018, in the manner set forth in the remedy section of this Decision and Order.

(f) Compensate Nat Welage, Katlyn Shuckhart, and Michelle Fite for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(g) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Nat Welage, Katlyn Shuckhart, and Michelle Fite, and within 3 days thereafter, notify each in writing that this has been done and that the discharges not be used against them in any way.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Saint Louis, Missouri, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 6, 2018.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 18, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce provisions of our Employee Confidentiality and Non-Compete Agreement prohibiting you from discussing pay, pay practices, or any other term and condition of employment.

WE WILL NOT tell you that because it is unlawful to terminate employees for going on strike, we will have to find another reason to terminate striking employees.

WE WILL NOT tell you not to talk around returning strikers because they might be recording conversations.

WE WILL NOT tell you not to talk about pay around other employees.

WE WILL NOT discharge or otherwise discriminate against you because you discuss pay, pay practices, or other terms and conditions of employment with other employees, or engage in any other of the above activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the provisions of the Employee Confidentiality and Non-Compete Agreement prohibiting you from discussing pay, pay practices, or other terms and conditions of employment.

WE WILL furnish you with an insert for the current Employee Confidentiality and Non-Compete Agreement that (1) advises that the unlawful provisions have been rescinded, or (2) provides lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to you a revised Employee Confidentiality and Non-Compete Agreement that (1) does not contain the unlawful provisions, or (2) provides lawfully worded provisions.

WE WILL, within 14 days from the date of this Order, offer Nat Welage, Katlyn Shuckhart, and Michelle Fite reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without

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prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Nat Welage, Katlyn Shuckhart, and Michelle Fite whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Nat Welage, Katlyn Shuckhart, and Michelle Fite for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from their files all references to the unlawful discharges of Nat Welage, Katlyn Shuckhart, and Michelle Fite, and WE WILL within 3 days thereafter,

notify each in writing that this has been done and that the discharges will not be used against them in any way.

AMAZING PET EXPOSITIONS LLC D/B/A
AMAZING PET EXPOS AND PET EVENT PROS

The Board's decision can be found at www.nlr.gov/case/14-CA-232234 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

